

Louisiana Law Review

Volume 36 | Number 2

*The Work of the Louisiana Appellate Courts for the
1974-1975 Term: A Symposium
Winter 1976*

Public Law: Bankruptcy

Hector Currie

Repository Citation

Hector Currie, *Public Law: Bankruptcy*, 36 La. L. Rev. (1976)

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BANKRUPTCY

*Hector Currie**

EFFECT OF DISCHARGE

In *Pounds v. Chicago Insurance Co.*¹ an action for personal injury and property damage had been seized under execution on July 28, 1972, at the direction of a judgment creditor of the plaintiff. Subsequently, the plaintiff became bankrupt, and on May 11, 1973, he received his discharge in bankruptcy. On July 13, 1973, by order of the bankruptcy court the interest of the bankrupt in the tort action was abandoned and disclaimed. Shortly thereafter the plaintiff moved to dismiss the seizure of his interest, alleging that as the creditor's judgment against him had been discharged the seizure under execution also was nullified. The trial court ordered that the seizure be dismissed but was reversed by the court of appeal. A discharge in bankruptcy affects only the bankrupt's personal liability and leaves unaffected a valid lien on the bankrupt's property abandoned by the trustee.²

In *Socony Mobil Oil Co. v. Burdette*³ a money judgment was obtained against a debtor in September, 1963. Duly recorded in East Baton Rouge Parish, the judgment was a judicial mortgage on real property the debtor acquired subject to a purchase-money mortgage in 1956. The debtor became bankrupt and scheduled the judgment among his debts, and he received a discharge in bankruptcy on September 15, 1964. Within the ten years allowed by statute,⁴ the creditor brought an action to revive⁵ the money judgment, to which the debtor pleaded his discharge in bankruptcy as an affirmative defense.⁶ Giving effect to this plea, the trial court dismissed the action. The First Circuit Court of Appeal reversed⁷ and the Louisiana Supreme Court granted writs.⁸ In an ac-

* Professor of Law, Louisiana State University.

1. 298 So. 2d 134 (La. App. 1st Cir. 1974).

2. 1A W. COLLIER, BANKRUPTCY § 17.29 (1971).

3. 309 So. 2d 655 (La. 1975).

4. LA. CIV. CODE art. 3547.

5. See LA. CODE CIV. P. art. 2031.

6. *Id.* art. 1005.

7. 295 So. 2d 854 (La. App. 1st Cir. 1974), discussed in *The Work of the Louisiana Appellate Courts for the 1973-1974 Term—Bankruptcy*, 35 LA. L. REV. 374 (1975).

8. 301 So. 2d 44 (La. 1974).

tion for revival of a judgment the burden is on the defendant to show good cause to deny the revival.⁹ He did not show good cause by merely pleading his discharge in bankruptcy for the reason that "a judicial mortgage . . . retains its viability *in rem* upon the incumbered property left to the bankrupt or his assignee. Only the personal liability of the bankrupt is discharged."¹⁰ The revival judgment should have provided, however, that it would apply only *in rem* against immovable property upon which the recorded judgment had been a judicial mortgage. As thus amended, the decision of the court of appeal was affirmed.

DEBTS UNAFFECTED BY DISCHARGE

Section 17a(2) of the Bankruptcy Act provides:

A discharge in bankruptcy shall release a bankrupt from all of his provable debts . . . except such as . . . (2) are liabilities for obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in any manner whatsoever with intent to deceive, or for willful and malicious conversion of the property of another. . . ."¹¹

If a petition in bankruptcy was filed after December 18, 1970, the effective date of the 1970 Bankruptcy Act amendments, the question whether a particular claim was discharged in bankruptcy is to be determined in most instances by the bankruptcy court. If, however, bankruptcy happened before the 1970 amendments took effect, the issue still is one for state courts.

In the 1973-1974 term no case of this sort was brought to the Louisiana appellate courts. In the 1974-1975 term there were two such cases. *Wilson v. Pittman*¹² correctly held that when an action of negligence was not begun until after the date of the tortfeasor's bankruptcy there was no provable claim, hence no dischargeable debt even if the discharge in

9. LA. CODE CIV. P. art. 2031.

10. 309 So. 2d 655, 656 (La. 1975).

11. 11 U.S.C. § 35a(2) (1970), *amending* 11 U.S.C. § 35a(2) (1960).

12. 307 So. 2d 804 (La. App. 1st Cir. 1975).

bankruptcy had been introduced in evidence. In *Custom Financing, Inc. v. Thibodaux*,¹³ an action on a note where plaintiff sought to counter the defense of discharge in bankruptcy with § 17a(2), the court of appeal held, as had the trial court after analysis of the facts, that defendants had not made use of a false financial statement to obtain credit nor had they willfully and maliciously converted the property of another.

13. 297 So. 2d 676 (La. App. 3d Cir. 1974).